

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

(Erie Division)

NATIONWIDE GENERAL  
INSURANCE COMPANY,

CIVIL ACTION NO. 1:21-cv-271

Plaintiff,

Judge Susan Paradise-Baxter

AZIZ HADZAVDIC and  
GARY MONSCHEIN,

Defendants.

**RESPONSE TO ORDER TO SHOW CAUSE**

AND NOW, comes the Plaintiff, Nationwide General Insurance Company, by its attorneys, DiBella Weinheimer, and presents this Response to this Honorable Court's Order to Show Cause for Failure to Serve Complaint with regard to the above-captioned matter in accordance with Federal Rule of Civil Procedure 4(m):

1. This matter was initiated by Complaint filed on September 30, 2021 (Doc. # 1).
2. This is a Declaratory Judgment Complaint relating to a property loss in Erie, Pennsylvania caused by frozen and broken water lines. Damages in the underlying action relate to damage to the real and personal property at the insured location.
3. Inadvertently, counsel for Plaintiff made the incorrect assumption that when the Complaint was mailed via Certified Mail for service on the two Defendants that the mailing included the appropriate Summons and Waiver of Service Forms. The Complaint did not, and the mailing sent to Defendant Gary Monschein and Defendant Aziz Hadzavdic via Certified Mail on October 22, 2021 did not contain either the Summons or

the Waiver of Service Forms. See attached Exhibit "A" with the letters and pleadings sent to each of the Defendants in October of 2021.

4. Both Defendants did in fact receive the Certified Mail letters with the enclosed Complaint. Mr. Hadzavdic called to confirm receipt and Mr. Monschein signed off on the return of service green card. See attached Exhibit "B".

5. Once this mistake was realized, on or about December 3, 2021, a copy of the Complaint was again mailed by certified mail to Defendant Aziz Hadzavdic along with the Waiver of Service Form requesting that he sign off on the Waiver. See Exhibit "C."

6. As to Defendant Monschein, Mr. Monschein currently lives in Florida. Counsel for Mr. Monschein, Timothy McNair of the McNair Law Offices, who did represent Mr. Monschein in the underlying lawsuit where a default judgment was obtained as against Defendant Aziz Hadzavdic, called the offices for undersigned counsel for Nationwide General Insurance Company and requested a copy of the Complaint which was provided to the McNair Law office. In the letter sent to Mr. McNair, a request was made that he sign off on the Waiver of Service Forms. At that time, counsel was still of the belief that the Complaint served in October of 2021 contained the Summons and Waiver of Service forms. Following that, there were conversations with Mr. McNair's office asking as to whether Attorney McNair would sign off on the form waiving service on December 3, December 14 and December 21, 2021.

7. Counsel is now clearly aware that the attempts at service were improperly done but was not aware at the time the pleadings were sent out. Errors were compounded in that counsel incorrectly believed that the Summons went out with the Complaint when originally mailed by certified mail in October of 2021, and that all that was needed was a

signed Waiver of Service form from each of the Defendants. There is no dispute that this assumption was incorrect and no dispute that counsel should have more properly scrutinized the mailings attempting service.

8. Plaintiff, Nationwide General Insurance Company, would like the opportunity to properly serve the Defendants. There is no issue as to locating the Defendants and getting the appropriate paperwork to them. It is anticipated that each of the Defendants will voluntarily sign off on the Waiver of Service forms as required once the proper service of the Complaint is made.

9. Counsel respectfully requests that additional time be granted to complete this process.

10. There is no prejudice to the Defendants as the Declaratory Judgment Complaint deals with a coverage question and an underlying lawsuit where a default judgment was taken against Defendant Aziz Hadzavdic. A determination of coverage on the merits will permit the matter to be resolved expeditiously and it is anticipated that once a short number of depositions or other discovery is concluded that the matter can be determined via cross Motions for Summary Judgment.

WHEREFORE, Plaintiff Nationwide General Insurance Company, respectfully requests that this Honorable Court excuse the inadvertent mistakes made with regard to the service of the Complaint in the above matter and grant an additional thirty (30) days to effect proper service of the Complaint pursuant to Federal Rule of Civil Procedure 4 (m).

Respectfully submitted,

DiBella Weinheimer

BY: /s/ Kathleen S. McAllister, Esq

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